

BEFORE THE STATE PERSONNEL BOARD OF THE STATE OF CALIFORNIA

In the Matter of the Appeal by)	Case Nos. 31502
)	and 31606
TIMOTHY J. GREEN)	
)	BOARD DECISION
From 3 working days' suspension and)	(Precedential)
1 day's suspension from the position)	
of State Traffic Officer with the)	NO. 92-18
Department of California Highway)	
Patrol at Hayward)	October 20, 1992

Before Carpenter, President; Stoner, Vice-President; Burgener and Ward, Members.

DECISION AND ORDER

This case is before the State Personnel Board (SPB or Board) for consideration after having been heard and decided by an SPB Administrative Law Judge (ALJ).

We have reviewed the ALJ's Proposed Decision sustaining the 3 working days' and 1 day's suspensions. The Board has decided to adopt the attached Proposed Decision as a Precedential Decision of the Board, pursuant to Government Code section 19582.5.

The findings of fact and Proposed Decision of the Administrative Law Judge in said matter are hereby adopted by the State Personnel Board as its Precedential Decision.

THE STATE PERSONNEL BOARD*

Richard Carpenter, President
Alice Stoner, Vice-President
Clair Burgener, Member
Lorrie Ward, Member

*Member Richard Chavez did not participate in this decision.

* * * * *

(Green continued)

I hereby certify that the State Personnel Board made and adopted the foregoing Decision and Order, and I further certify that the attached is a true copy of the Administrative Law Judge's Proposed Decision adopted as a Precedential Decision by the State Personnel Board at its meeting on October 20, 1992.

GLORIA HARMON
Gloria Harmon, Executive Officer
State Personnel Board

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TIMOTHY J. GREEN)	Case Nos. 31502
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From 3 working days' suspension and)	
1 days's suspension from the position of)	
State Traffic Officer with the Department)	
of California Highway Patrol at Hayward)	

PROPOSED DECISION

These matters came on regularly for hearing before Philip E. Callis, Administrative Law Judge, State Personnel Board on August 28, 1992, at San Francisco, California.

The appellant, Timothy J. Green, was present and was represented by John Markey, Labor Representative, California Association of Highway Patrolmen.

The respondent was represented by Daniel E. Lungren, Attorney General, by William Clark, Deputy Attorney General.

Evidence having been received and duly considered, the Administrative Law Judge makes the following findings of fact and Proposed Decision:

I

The above 3 working days' suspension effective July 3, 1992, and the 1 day's suspension effective July 6, 1992, and appellant's appeals therefrom comply with the procedural requirements of the State Civil Service Act.

II

The appellant has been a State Traffic Officer since 1990. He has no prior adverse actions.

III

As cause for the three working days' suspension it is alleged that the appellant caused two preventable patrol vehicle collisions.

As cause for the one day's suspension, it is alleged that the appellant missed two court appearances.

THREE WORKING DAYS' SUSPENSION

IV

The parties stipulated and pursuant to that stipulation it is found that:

During the period of time commencing with October 16, 1991, through September 20, 1992, while on duty, the appellant was involved in two preventable patrol vehicle collisions which resulted in total damage to both vehicles and injuries to the appellant and the other driver in the first accident, and minor damage to the patrol vehicle and no injuries in the second collision.

A. Specifically, on or about October 16, 1991, at approximately 2041 hours, while responding westbound on East Castro Valley Road to a report of a traffic collision (details unknown), the appellant failed to remain stopped for a red traffic signal at a controlled intersection as required by California Vehicle Code section 21453(a). Furthermore, though responding to an emergency call, the appellant failed to activate his patrol vehicle's red light and siren prior to crossing the intersection as required by California Vehicle Code section 21055. Subsequently, as a result of the appellant's negligence, a vehicle being driven

eastbound on East Castro Valley Road collided with the front of the appellant's patrol vehicle causing total damage to both vehicles, and injury to both the appellant and the other driver.

B. Additionally, on or about February 20, 1992, at approximately 0045 hours, while on duty, the appellant operated his patrol vehicle in an unsafe manner which resulted in a preventable patrol vehicle collision. Specifically, while driving northbound on Hesperian Boulevard at a speed of approximately 25 miles per hour, the appellant slowed to approximately 5 miles per hour as he turned right into a private driveway to a fast food restaurant. The appellant failed to see a steel pipe of approximately 32-3/4 inches in height as he turned into the driveway, and he struck the pipe causing minor damage to the left front fender of his patrol vehicle. Although the appellant violated no specific Vehicle Code section, since the Vehicle Code does not apply on private property, the turning maneuver was nonetheless an unsafe act occurring as a result of his negligence.

V

At the hearing, the appellant did not offer any factual defense to the two vehicle collisions. His sole argument was that the penalty was excessive. The appellant attempted to introduce a number of adverse actions involving other officers who has been involved in multiple vehicle collisions who had received various levels of adverse action. The respondent objected to the admission of the other adverse actions on the grounds that all of the factual situations involved in those other cases were different, and that if those adverse actions were admitted in evidence, it had a set of additional adverse actions that it wanted to admit into evidence involving similar situations of even greater penalty. The Administrative Law Judge ruled that in the absence of a clear pattern of set penalties for a

particular offense, evidence of other adverse actions would not be admitted in evidence. Since no such pattern was apparent from the actions offered, they were excluded.

ONE DAY'S SUSPENSION

VI

The parties stipulated and pursuant to that stipulation it is found that:

On two separate occasions during the period of February 28, 1992, through March 17, 1992, the appellant failed to appear in court. Specifically, on or about February 28, 1992, the appellant failed to appear in the Fremont Municipal Court as required by service of a criminal court subpoena. On March 17, 1992, the appellant failed to appear in Oakland Municipal Court in response to a criminal court subpoena. The appellant's failure to appear on the latter case resulted in a citizen's complaint being sustained against him.

VII

At the hearing, the appellant did not dispute that he missed the two court appearances. On the first case, the appellant testified that he overslept because he had worked a full graveyard shift the day before the appearance and had spent the remainder of the day in court on another case. After working a second graveyard shift, the appellant overslept and missed his court appearance on the second day. With regard to the second case, the appellant thought that the case was scheduled in the afternoon. When the area clerk called him at home to remind him of the morning appearance, he tried to telephone the court to advise that he would be late but could not determine which department the case had been assigned to. The appellant therefore decided not to go to court since he was already late and did not know where he was supposed to go. The appellant argued that since he did

not intentionally miss his court appearances, his conduct should be excused or at least mitigated.

* * * * *

PURSUANT TO THE FOREGOING FINDINGS OF FACT THE ADMINISTRATIVE LAW JUDGE MAKES THE FOLLOWING DETERMINATION OF ISSUES:

THREE WORKING DAYS' SUSPENSION

The appellant's conduct of causing two preventable patrol car collisions constituted inefficiency and inexcusable neglect of duty. The appellant's failure to activate his red lights and siren before entering an intersection against a red traffic signal and his failure to exercise due care in this regard caused a collision with a private citizen with substantial damage to both vehicles and injuries to himself and the citizen. His second accident, although less serious, demonstrated a pattern of negligent behavior which justified adverse action as a corrective measure.

The appellant's attempt to mitigate his penalty by inviting a review of other cases where a lesser penalty was imposed for allegedly similar misconduct is rejected. The State Personnel Board will consider adverse actions of other employees where there is a clear pattern establishing that the penalty in a particular case is out of line with the agency's usual practice. However, such evidence is admissible only where there is a clear pattern to the cases, e.g., to show that dismissal is not the usual penalty for a particular offense or that adverse action is not taken at all. Where the adverse actions merely establish that there are minor differences in penalty for the same class of offense, the evidence is not admissible.

An agency is not required to impose the exact same penalty in every single case involving similar factual circumstances. There are a variety of factors which may influence

an agency to take stronger action in one case than it does in another including the length of the employee's service the underlying circumstances of the offense, and the overall policy of the agency in seeking to deter the misconduct involved. Thus, unless there is a clear pattern among the cases which demonstrates that a particular case is clearly outside the scope of the usual agency discretion, such evidence will not be admitted.

A contrary result would require the Board to engage in the ultimately futile task of reviewing and re-reviewing all of the past cases of similar misconduct over the past 20 years for which records are available.¹ Such a use of resources is not warranted nor is it required under case law. "When it comes to a public agency's imposition of punishment [in an employee discipline case], there is no requirement that charges similar in nature must result in identical penalties." (Talmo v. Civil Service Commission (1991) 231 Cal.App.3d 210.)

The State Personnel Board is the ultimate authority delegated by law to fix the level of appropriate disciplinary action in the State civil service (Ng v. State Personnel Board (1977 68 Cal.App.3d 600, at 605). Under this authority, the Board independently reviews the facts of each case to determine whether the penalty imposed by the appointing power is "just and proper" (Rita T. Nelson (1992) SPB Dec. No. 92-07). In arriving at its conclusion, the Board considers all relevant factors including the extent to which the employee's misconduct resulted in harm to the public service, the circumstances surrounding

¹The parties in this case proposed to have the Administrative Law Judge review a thick stack of prior adverse actions involving patrol vehicle collisions going back to 1973. A cursory review of these actions revealed that each involved widely divergent factual patterns and penalties. Review of the documents would have involved a considerable amount of time with little or no probative result. Evidence Code section 352 permits the exclusion of evidence when its probative value is substantially outweighed by the probability that its admission will necessitate an undue consumption of time.

the misconduct, and the likelihood of recurrence (Skelly v State Personnel Board (1975) 15 Cal.3d 194). Having reviewed all of the factors in this case, it is concluded that the three working days' suspension imposed on the appellant is well within the range of penalties appropriate to the offense.

ONE DAY'S SUSPENSION

The appellant's conduct of failing to appear in court on two criminal cases constituted inexcusable neglect of duty and a failure of good behavior during the duty hours of such a nature that it caused discredit to the California Highway Patrol. One of the appellant's most important duties is to appear in court to testify about citations he has issued in the course of his official duties. An officer's failure to make such a court appearance inconveniences the parties, jeopardizes the criminal prosecution, and tends to discredit the Highway Patrol in the eyes of the public. Although the appellant had to work long hours because of his graveyard shift combined with court appearances, this is the nature of the work that he has chosen, and he must conform his behavior to the requirements of the job. A one day's suspension is not an unreasonable penalty for two failures to appear in less than a one month period.

* * * * *

WHEREFORE IT IS DETERMINED that the 3 working days' suspension taken by respondent against Timothy J. Green effective July 3, 1992, and the 1 day's suspension effective July 6, 1992, are hereby sustained without modification.

* * * * *

I hereby certify that the foregoing constituted my Proposed Decision in the

(Green continued - Page 8)

above-entitled matters and I recommend its adoption by the State Personnel Board as its decision in the cases.

DATED: October 13, 1992.

PHILIP E. CALLIS
Philip E. Callis, Administrative Law
Judge, State Personnel Board